

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Application No. 16259** of the George Washington University, pursuant to 11 DCMR 3108.1 for a special exception under Section 2003 to change a nonconforming use from retail grocery, basement and first floor to grocery and delicatessen, basement and first floor of a structure in an R-5-E District at premises 2140 F Street, N.W. (Square 81, Lot 811).

**HEARING DATES:**                **July 2 and July 23, 1997**  
**DECISION DATES:**        **September 3 and October 1, 1997**

**ORDER**

**SUMMARY OF EVIDENCE:**

1. The property that is the subject of this application is located on the south side of F Street, N.W. between 21<sup>st</sup> and 22<sup>nd</sup> Streets and consists of one lot of record (Lot 811) in Square 81. It is improved with a two-story plus basement row house built in the 1920's. The basement and first floor are presently used as a grocery store. This use was first established in 1958. The second floor is presently vacant.
2. A 10-foot wide alley, running east-west, abuts the property in the rear.
3. The area surrounding the site consists of some high-rise and low-rise apartment buildings, office buildings, a hotel and various university uses. The property immediately east is vacant and boarded up. The properties to the west (row house type) are used as residences.
4. The site is zoned R-5-E. The R-5-E District permits matter-of-right general residential uses of high density development, including single-family dwellings, flats, and apartments to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.0 for apartments; 5.0 for other structures and a maximum lot occupancy of 75 percent.
5. The applicant owns the property which is operated by Mesco, Inc., the tenant. The facility had previously operated a pizza establishment along with the grocery store, but was cited for not having a license for the pizza (delicatessen) portion or the operation.
6. The applicant is requesting a special exception under Section 2003 to change a non-conforming use from retail grocery, basement and first floor, to grocery and delicatessen, basement and first floor. The applicant maintained that the proposed use is a neighborhood facility. The applicant is proposing to use the basement as a delicatessen where only pizza

would be sold. The delicatessen would be used as a carryout, with approximately 50 percent of the pizzas being delivered by foot. The pizzas would be sold from 11:00 a.m. to 11:00 p.m. Monday through Sunday. The operator of the facility testified that a total of four persons would be working at the site. The operator further testified that there would not be an increase in trash as a result of the pizza business.

7. The facility would be required to have two parking spaces. The operator testified that she is allotted three of the parking spaces controlled by the owner, George Washington University.

8. The applicant contends that the granting of this application would not adversely affect the present character of the surrounding area, nor would the intended use affect the future development of the surrounding area. Claiming that most of the customers of the store are walk-in and delivery order customers of the surrounding neighborhood, the applicant believes that the limited additional service created by the pizza business would not increase the amount of noise or traffic in the neighborhood, nor will it detrimentally affect any of the institutional facilities in the area.

9. The D.C. Office of Planning (OP) offered evidence and testimony to support its recommendation that the special exception be granted. OP found that the change of nonconforming use from a grocery store to a delicatessen would not have a significant adverse impact on the area or the character of the neighborhood.

10. The Advisory Neighborhood Commission (ANC) 2A did not submit a written report or present testimony related to the application.

11. Several letters of support, a petition from the customers of the grocery store, and testimony from neighbors and an ANC commission member stated that the application should be granted. The supporters believe that the proposed use would be an asset to the community and that it is in compliance with the Zoning Regulations.

12. Those in opposition to the application sent letters and testified to the effect that the applicant does not meet any of the criteria for the relief granted, that the proposed relief would affect the present character of the surrounding residential area by increasing trash, noise and double parking. In addition, those in opposition offered testimony that when they pass by the store, they see people sitting on the steps in front of the store and/or on the benches located outside the store. These areas were being used by customers for eating and drinking products purchased from the pizza place or the grocery store. The opponents believe that because of the ability to sit and eat, the facility would be used for more than merely a carryout with occasional delivery. They believe that to grant this application would create a dangerous precedent, possibly paving the way for the property to be sold to a business such as Papa John's or Dominoes.

13. Responding to the concerns raised by the opponents, the applicant stated that the neighbors who live closest to the facility know how well it is operated, and those who live farther away do not provide credible evidence on the operation of the facility. The applicant offered to remove the wooden benches located in front of the store to prevent patrons from using them to eat their food.

**FINDINGS OF FACT:**

Based on the evidence of record, the Board finds as follows:

1. This is a food delivery service, not just a delicatessen/grocery.
2. Store benches and planters located on the property are configured in such a way that they invite foot traffic which would encourage expansion of the use from delivery to an outdoor restaurant.

**CONCLUSIONS OF LAW AND OPINION:**

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception to change a nonconforming use from a retail grocery, basement and first floor to grocery and delicatessen, basement and first floor of a structure in an R-5-E District. The granting of such special exception relief requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the application will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

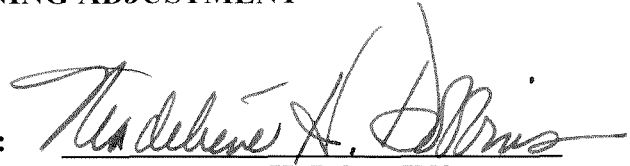
The Board concludes that the applicant has not met the burden of proof. The Board concludes that the grocery store is first allowed as a matter-of-right in a C-1 District. Under Section 2003, if the proposed use is deemed to be a neighborhood facility, the applicant may change that nonconforming grocery store use to another use allowed as a matter of right in the C-1 District. While the applicant's request is for a delicatessen, the use described at the hearing is one of a pizza delivery service, with about 50 percent of the pizzas prepared being delivered to nearby locations. A food delivery service is first allowed as a matter of right in the C-2-B District under Subsection 721.3(s). It is not allowed as a matter-of-right in a C-1 District. Based on the Board's understanding of the Zoning Regulations, a grocery store cannot be changed to a food delivery service in an R-5-E District without variance relief. The Board believes that the use, as proposed, would impermissibly expand the existing nonconforming use. Finally, the Board concludes that to grant a special exception for a deli/grocery store, where the actual deli use is that of a pizza delivery service would not be in harmony with the general purpose and intent of the zone plan for the R-5-E District.

Accordingly, the Board hereby **ORDERS** that this application be **DENIED**.

**VOTE: 5-0** (Susan Morgan Hinton, Laura M. Richards, Maybelle Taylor Bennett, Sheila Cross Reid and Betty King to deny the application).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

ATTESTED BY:



**MADELIENE H. DOBBINS**  
**Director**

**Final Date of Order:** APR 16 1998

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 16259**

As Director of the Board of Zoning Adjustment, I certify and attest that on  
APR 16 1998 a copy of the order entered on that date in this matter was  
mailed first class, postage prepaid to each party who appeared and participated in the public  
hearing concerning this matter, and who is listed below:

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Attested By:

A handwritten signature in cursive script, reading "Madeliene H. Dobbins", written over a horizontal line.

**MADELIENE H. DOBBINS**  
**Director**

**Date:** APR 16 1998

attest/ljp